

REMARKS

This Response is submitted in reply to the final Office Action mailed on June 28, 2007. No fee is due in connection with this Response. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-460 on the account statement.

Claims 1-24 are pending in this application. In the Office Action, Claims 1- 4 and 6-11 are rejected under 35 U.S.C. §102 and Claims 5, 12-16 and 17-24 are rejected under 35 U.S.C. §103. For at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-4 and 6-11 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,416,270 to Steury et al. ("Steury"). Applicants respectfully disagree and traverse the rejection for at least the reasons set forth below.

Independent Claim 1 recites, in part, a kiosk configured for selling and manufacturing customized food for a pet that includes a customer interface area for receiving information regarding the pet and a computer for receiving information regarding the pet and generating a pet profile. For example, the kiosk receives pet-relevant data and processes the data utilizing at least one algorithm. See, specification, page 2, paragraph [0006]. From the data, the computer can generate a profile containing specific customized food product and feeding instructions recommended for the specific pet. See, specification, page 6, paragraph [0014]. In contrast, Applicants respectfully submit that *Steury* fails to disclose or suggest every element of Claim 1.

Steury fails to disclose or suggest a customer interface area for receiving information regarding the pet or a computer for receiving information regarding the pet and generating a pet profile as required, in part, by Claim 1. Instead, *Steury* is drawn to a kiosk with a data entry panel 22. *Steury*'s data entry panel merely senses user actions to dispense or to return specific items to and from inventory. See, *Steury*, col. 4, lines 37-41. The user follows the programmed, menu'ed instructions and/or selection sequence displayed on the data entry panel to make the appropriate selections. See, *Steury*, col. 4, line 58 to col. 5, line 10. Thus, *Steury*'s computer as disclosed does not generate a pet profile or receive user-defined pet information from a consumer. In fact, *Steury*'s computer does not receive any information from a consumer that has

not been specifically pre-programmed or listed in the computer (i.e. as dispensable inventory or returnable items). See, *Steury*, col. 4, line 58 to col. 5, line 10. In this regard, *Steury* fails to disclose or suggest a consumer interface area and computer for receiving pet information and generating a pet profile as required, in part, by Claim 1.

Independent Claim 1 also recites, in part, several kiosk areas including a biological sample analysis area for analyzing the biological information regarding the pet, at least one product additive storage area having at least one shelf, and an ingredient mixing area. For example, a veterinarian/technician can obtain analytical data from a biological sample on site at a biological sample analysis and handling area. See, specification, page 5, paragraph [0013]. Furthermore, an additive can be made on site in the presence of the consumer at an ingredient mixing area and later stored in a product additive storage area. See, specification, page 5, paragraphs [0013] to page 6, paragraph [0014].

Steury also fails to disclose or suggest the various kiosk areas in accordance with Claim 1. For example, *Steury* also fails to disclose or suggest a biological sample analysis area for analyzing the biological information regarding the pet or an ingredient mixing area as required, in part, by Claim 1. Instead, *Steury* is drawn to a kiosk with multiple storage locations and shelving that supports drawers containing inventory. See, Office Action, page 2, lines 19-22 and page 3, lines 1-5; *Steury* col. 2, lines 14-18. The kiosk in *Steury* is designed for walk-in use such that shelves are only accessible from an interior access space. See, *Steury*, col. 2, lines 29-37. The shelves in *Steury* are constructed depending on the merchandise, the installation location and/or the re-supply schedule. See, *Steury*, col. 4, lines 35-37. Thus, *Steury*'s multiple storage locations refer simply to drawers that are sized and configured merely to house inventory in a walk-in space. See, *Steury*, column 2, lines 14-18. In this regard, *Steury* provides no teaching or suggestion that the drawers can be sufficiently used to mix ingredients or to analyze biological data before the product is dispensed to a consumer. Therefore, contrary to the Patent Office assertion, there is no disclosure or suggestion in *Steury* to provide a kiosk with sufficient areas for an individual to work on. See, Office Action, page 3, lines 3-5.

Moreover, Applicants respectfully submit that the Patent Office has failed to demonstrate that any portion of *Steury* is directed to a kiosk configured for selling and manufacturing customized food as required, in part, by Claim 1. As discussed above, *Steury*'s device merely

dispenses or accepts return of particular merchandise that is pre-programmed into the computer. See, *Steury*, col. 5, lines 1-2. Also discussed above, the disclosure of *Steury* fails to teach or suggest a workplace to mix ingredients or products. Therefore, *Steury* fails to disclose or suggest a kiosk configured for manufacturing customized food, as required in part, by Claim 1. Furthermore, the Patent Office has failed to provide any specific evidence within *Steury* showing that the automated kiosk could be used for customized pet food, let alone any reference whatsoever to customized pet food products.

The Patent Office argues that the claimed kiosk areas do not structurally change the kiosk as compared with *Steury*. The Patent Office states that Applicants' invention must result in a structural differences from the prior art in order to patentably distinguish the claimed invention from the prior art, and that if the prior art structure is capable of performing the intended use then it meets the claim. Structurally, the present claims recite, in part, a biological sample analysis and handling area and an ingredient mixing and consumer observation area. These areas provide a kiosk operator with sufficient workroom to analyze biological samples (e.g. stool) and to prepare additives and mix ingredients on site. See, specification, page 5, paragraphs [0013] to page 6, paragraph [0014]. By contrast, *Steury* discloses a display case where products can be observed by a consumer but which is sized at a depth of only 6 to 12 inches (i.e. large enough to house only some representative items contained in the kiosk). See, *Steury*, col. 4, lines 14-37. These are significant structural differences, considering the fact that features of the kiosk permitting the customization of pet food products are unique aspects of the invention and are not disclosed or suggested in *Steury*.

For at least the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2-4 and 6-11 that depend therefrom are novel, nonobvious and distinguishable from the *Steury*.

Accordingly, Applicants respectfully request that the anticipation rejection with respect to Claims 1-4, and 6-11 be reconsidered and the rejection be withdrawn.

In the Office Action, Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Steury*. However, Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claim 5 that depends therefrom.

In this regard, the cited reference fails to teach or suggest the elements of Claim 5 in combination with the novel elements of Claim 1.

In the Office Action, Claims 12-15 and 17-24 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,681,717 to Burghardi et al. (“*Burghardi*”). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 12 recites, in part, a method comprising the steps of performing an analysis of a biological sample for a pet at the analysis station of a kiosk and receiving a customized pet food product formula based on the biological sample at the analysis station.

Similarly, independent Claim 20 recites, in part, a method comprising the steps of processing data from a biological sample at a biological sample analysis and handling area of a kiosk and presenting selected kibble and customized additive to a customer at an ingredient mixing and customer observation area of the kiosk. In contrast, Applicants respectfully submit that *Burghardi* fails to disclose or suggest all of the elements of independent Claims 12 and 20.

Burghardi fails to teach or suggest the steps of performing analysis of or processing data of a biological sample for a pet as required, in part, by Claims 12 and 20. Specifically, the Patent Office asserts that certain evaluation criteria including animal production rates, for example, comprises analysis of a biological sample. See, Office Action, page 7, lines 10-15. However, this is not the same “biological sample” disclosed by Applicants. For example, as shown in the Example in Applicants’ specification, a “biological sample” refers to a biological sample, such as, for example, a stool sample, that may be analyzed to determine the properties of the sample. See, specification, page 8, paragraph [0021]. Applicants respectfully submit that *Burghardi* fails to disclose or suggest analyzing a similar biological sample. Thus, *Burghardi* fails to disclose or suggest the step of analyzing or processing data from a biological sample in accordance with Claims 12 and 20.

Similarly, *Burghardi* fails to disclose analyzing biological samples or data at an analysis station or selecting a product based on data processed at a biological sample analysis station as required, in part, by independent Claims 12 and 20. Even if *Burghardi* discloses a biological sample, which Applicants dispute, the Patent Office has still failed to provide any specific evidence within *Burghardi* showing that a biological sample can be analyzed at an analysis

station of a kiosk, as required, in part, by Claim 12 or that data can be processed at the biological sample analysis and handling area of a kiosk, as required, in part, by Claim 20. Moreover, the Patent Office has also failed to provide any specific evidence within *Burghardi* showing that a customized pet food product can be selected based on data processed at the analysis area of a kiosk, as required, in part, by Claims 12 and 20. Instead, *Burghardi* does not explicitly disclose the use of a kiosk. Patent Office admits the same. See, Office Action, page 8, line 4. Therefore, *Burghardi* fails to teach or suggest the step of analyzing samples at a sample analysis station of a kiosk in accordance with Claims 12 and 20.

Furthermore, *Burghardi* fails to teach or suggest the step of presenting selected kibble and a customized additive to a consumer at an ingredient mixing and customer observation area as required, in part, by Claim 20. Instead, *Burghardi* is directed to using ingredients available at a first location (e.g. on-farm ingredients) and ingredients available at a second location (e.g. ingredients available at a supplier location). See, *Burghardi*, col. 10, lines 12-22. In *Burghardi*, the feed is provided from individual locations and *Burghardi* provides no teaching or suggestion that the feed is mixed at an ingredient mixing area of a kiosk in front of a consumer before being presented to the consumer in accordance with Claim 20.

For at least the reasons discussed above, *Burghardi* does not teach, suggest, or even disclose all of the elements of independent Claims 12 and 20 and Claims 13-15, 17-19 and 21-24 that depend therefrom, and thus, fail to render the claimed subject matter obvious.

In the Office Action, Claim 16 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Burghardi* in view of *Steury*. However, Applicants respectfully submit that the patentability of Claim 12 as previously discussed renders moot the obviousness rejection of Claim 16 that depends therefrom. In this regard, the cited references, even if combinable, fail to teach or suggest the elements of Claim 16 in combination with the novel elements of Claim 12, as is discussed herein above.

Accordingly, Applicants respectfully request that the obviousness rejections with respect to Claims 12-24 be reconsidered and the rejections be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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